

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

TATIANA SHERMAN

PLAINTIFF

V.

CIVIL ACTION NO.: 1:21-CV-00190-GHD-DAS

**ITAWAMBA COMMUNITY COLLEGE,
JOE LOWDER, TZER NAN WATERS, and
DR. JAY ALLEN**

DEFENDANTS

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants Itawamba Community College (“ICC”), Tzer Nan Waters (“Waters”), and Dr. Jay Allen (“Allen”) (collectively “these Defendants”), by and through counsel of record and pursuant to F.R.C.P. 56, and respectfully submit *Motion for Summary Judgment*, as follows:

1. Plaintiff’s cause of action based on an alleged violation of the First Amendment of the United States Constitution is barred because her speech, at all materials times, was not protected speech but was employee speech pursuant to and within the scope of her official duties as an employee of ICC.
2. Plaintiff’s termination was not the result of unlawful retaliation, because her involved complaints were not speech protected by the First Amendment.
3. Plaintiff’s malicious interference claim should be barred as duplicative of Plaintiff’s federal claims.
4. Plaintiff’s claim for emotional distress is barred pursuant to the Mississippi Worker’s Compensation Act.
5. Plaintiff’s pendent *McArn* claim is barred as a matter of law.
6. Plaintiff’s Whistleblower claim is barred as a matter of law.

7. In support of this *Motion for Summary Judgment*, these Defendants rely on their *Memorandum Brief in Support of Motion for Summary Judgment*, as well as the following exhibits:

- (a) Exhibit A – *Performance Improvement Plan (ICC Sherman 2-000065-67)*;
- (b) Exhibit B – *September 5, 2019 Performance Improvement Plan Update (ICC Sherman 000004)*;
- (c) Exhibit C – *December 18, 2019 Performance Improvement Plan Review (ICC Sherman 000005-16)*;
- (d) Exhibit D – *Performance Evaluation Form (ICC Sherman 2-000060-64)*;
- (e) Exhibit E – *March 4, 2020 Memo (ICC Sherman 000026)*;
- (f) Exhibit F – *May 24, 2021 Allen Letter (ICC Sherman 000023)*;
- (g) Exhibit G – *Sherman Job Description (ICC Sherman 000020-21)*; and
- (h) Exhibit H – *April 5, 2019 Response to Performance Evaluation*.
- (i) Exhibit I – *Excerpts from December 12, 2022 Deposition of Plaintiff, Tatiana Sherman*.

WHEREFORE, PREMISES CONSIDERED, these Defendants respectfully request that this Court enter a judgment as a matter of law in their favor, dismissing Plaintiff's claims against them with prejudice. These Defendants request any further relief deemed appropriate by this Court.

RESPECTFULLY SUBMITTED, this the 30th day of May, 2023.

**ITAWAMBA COMMUNIT COLLEGE,
TZER NAN WATERS, AND DR. JAY ALLEN,
DEFENDANTS**

BY: /s/ Benjamin E. Griffith
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CERTIFICATE OF SERVICE

I, Benjamin E. Griffith, hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

THIS the 30th day of May 2023.

/s/ Benjamin E. Griffith

OF COUNSEL